



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : CHI/00HF/F77/2023/0013

Property : 11 Launceston Close, Old Town, St. Mary's,
Isles of Scilly, TR21 0NJ

Applicant Tenant : Mrs J Morley

Representative : None

Respondent Landlord : Duchy of Cornwall

Representative : None

Type of application : Determination of registered rent
pursuant to Section 70 Rent Act 1977

Tribunal member(s) : Mrs J Coupe FRICS
Mr C Davies FRICS
Mrs A Clist MRICS

Date of decision : 19 June 2023

DECISION

© CROWN COPYRIGHT

Decision of the Tribunal

On 19 June 2023 the Tribunal determined that a sum of £2,295.00 per quarter will be registered as the Fair Rent with effect from the same date.

Background

1. On 28 December 2022 the Rent Officer received an application on behalf of the landlord, dated 12 December 2022, for registration of a Fair Rent of £9,341.00 per annum.
2. On 21 February 2023 the Rent Officer registered a rent of £2,335.00 per quarter (£9,340 per annum) effective from 3 March 2023.
3. On 28 February 2023 the tenant objected to the registered rent and the matter was referred to the First-tier Tribunal (Property Chamber) for determination.
4. The tenant occupies the property under an assured tenancy by way of a succession to a Rent Act tenancy dated 1974. The succession took effect after the death of the tenant's husband on an undisclosed date prior to 9 January 2023.
5. The Rent Register states that the landlord is responsible for repairs and external decorations, whilst the tenant covenants to decorate internally. Section 11 Landlord and Tenant Act 1985 applies.
6. On 22 March 2023 the Tribunal issued Directions advising the parties that it considered the matter suitable for determination on papers unless either party objected, in writing, within 7 days. The parties were also advised that no inspection would be undertaken. No objections were received, although the landlord suggested that an inspection would be beneficial due to the uniqueness of the Isles of Scilly.
7. The Directions required the landlord and tenant to submit their completed statements to the Tribunal by 5 April 2023 and 19 April 2023 respectively, with copies to be sent to the other party. Both parties complied.
8. Having reviewed the application, the Tribunal concluded that the matter was capable of being determined fairly, justly and efficiently on the papers, consistent with the overriding objective of the Tribunal.
9. These reasons address in **summary form** the key issues raised in the application. They do not recite each point. The Tribunal concentrates on those issues which, in its view, go to the heart of the application.

Law

10. When determining a Fair Rent the Tribunal, in accordance with section 70 of the Rent Act 1977, must have regard to all the circumstances including the age, location and state of repair of the property. It also must disregard

the effect if any of any relevant tenant's improvements and the effect of any disrepair or any other defect attributable to the tenant or any predecessor in title under the regulated tenancy, on the rental value of the property.

11. In *Spath Holme Ltd v Chairman of the Greater Manchester etc Committee* (1995) 28HLR 107 and *Curtis v London Rent Assessment Committee* (1999) QB 92 the Court of Appeal emphasised:

That ordinarily a fair rent is the market rent for the property discounted for scarcity i.e. that element, if any, of the market rent, that is attributable to there being a significant shortage of similar properties in the wider locality available for letting on similar terms to that of a regulated tenancy, and

That for the purposes of determining the market rent, assured tenancy market rents are usually appropriate comparables; adjusted as necessary to reflect any relevant differences between the comparables and the subject property.

12. The Rent Acts (Maximum Fair Rent) Order 1999 restricts the amount by which the rent, less variable service charge, may be increased to a maximum 5.00% plus Retail Price Index since the last registration.
13. Under paragraph 7 of the Order an exemption to this restriction applies where the Landlord proves that repairs or improvements undertaken have increased the rent by at least 15% of the previous registered rent.

The Property

14. In accord with current policy, the Tribunal did not inspect the property, instead relying on information provided and viewing the exterior of the property via publicly available online platforms.
15. The property is a semi-detached house located in the Old Town part of the island, approximately ½ mile from the main town. The property is believed to have been built in or around 1966.
16. The accommodation comprises a porch, entrance hall, living room, dining room, kitchen, separate WC, 3 bedrooms, bathroom/WC, utility area.
17. The property has a garden.
18. The tenancy does not include a garage. A garage is occupied under a separate agreement which is excluded from the rent determined.
19. Having consulted the National Energy Performance Register online the Tribunal noted the property to have an Energy Performance Certificate (EPC) Rating of E and a recorded floor area of 106m².

Representations – Tenant (summarised)

20. The tenant stated that life on the Isles of Scilly is very different to the mainland; that residents are unable to buy their own home; wages are lower than the mainland and that the cost of living is 25% higher.
21. With the exception of the airport, there is no public transport in the immediate area. The property also sits beneath a flight path.
22. The tenant stated that no recent works have been undertaken to the property by the landlord and, accordingly, the EPC rating has not improved. Furthermore, that there is no central heating, nor white goods, carpets or curtains, and that the tenant is responsible for internal repairs and decoration. The ground floor economy 7 heating was installed by the tenant 13 years ago and the multi-fuel burner does not heat the water or any radiators. Approximately 4 years ago the landlord updated the electric heaters and added further heaters to the first floor.
23. The kitchen was extended in 1974 at the tenant's expense.
24. The tenant advised that demand for houses on the island exceeds supply.

Representations – Landlord (summarised)

25. The landlord concurs that the tenant installed night storage heaters on the ground floor, which the landlord has since upgraded. The landlord has installed three electric heaters to the first floor. Windows are double glazed.
26. White goods, carpets and curtains are provided by the tenant.
27. Landlord's improvements:
 - i. Kitchen worktops replaced c.15 years ago
 - ii. Kitchen cupboard fronts replaced c.8 years ago
 - iii. Bathroom refurbishment and insulation c.10 years ago
 - iv. Backboiler and radiators removed c.4-5 years ago.
28. An energy performance rating of E.
29. The property is situated close to the airport.

Determination

30. The Tribunal has carefully considered all of the submissions before it.
31. In the first instance, the Tribunal determined what rent the landlord could reasonably be expected to obtain for the property in the open market if it were let today in the condition that is considered usual for an open market letting. Neither party submitted any evidence in such regard and the Tribunal therefore relied on its own experience as a specialist expert Tribunal and its knowledge of rental values to arrive at an open market rental value of £3,000 per quarter.

32. Once that hypothetical rent was established, it was necessary for the Tribunal to adjust the figure to allow for the differences between the terms and condition considered usual for such a letting and the condition and facilities of the actual property at the valuation date, ignoring any tenant's improvements.
33. The Rent Officer adjusted the open market rent to reflect the tenant's liability for internal decoration, the tenant's provision of white goods, floor coverings and curtains, the lack of central heating and for wiring. The Rent Officer made a further deduction to reflect scarcity in the market.
34. Neither party challenged the Rent Officer's deductions and both parties concurred that no white goods, carpets or curtains were provided by the landlord. The Tribunal finds that there is no central heating but that electric heaters are provided.
35. Accordingly, in reflection of the differences in condition of the property and the provision of landlord's white goods, carpets and curtains between a hypothetical market letting and the subject property, and in reflection of the EPC rating, the Tribunal makes a deduction of 10% from the open market rent.
36. Furthermore, the tenant is responsible for the internal decoration of the property. The Tribunal considers such a covenant a greater burden than the normal responsibility for an assured shorthold tenant to keep the landlords' decorations in good order. Accordingly, the Tribunal allow an additional deduction of 5%.
37. Deducting a total of 15% from the hypothetical rent, the Tribunal arrived at an adjusted rent of £2,550.00 per quarter.
38. The Tribunal then directed itself to the question of scarcity, as referenced in paragraph 11 above and, in arriving at its decision on the point, takes account of the following:
 - a. The Tribunal interpreted the 'locality' for scarcity purposes as being the whole area of Isles of Scilly and West Cornwall (i.e. a sufficiently large area to eliminate the effect of any localised amenity which would, in itself, tend to increase or decrease rent);
 - b. Availability of property to rent;
 - c. Local Authority and Housing Association waiting lists;
 - d. House and rental prices which could be an indicator of increased availability of housing and a reduction in scarcity;
 - e. Both parties referred to the scarcity of available rental property on the island.
39. The members of the Tribunal have, between them, many years of experience of the residential letting market and that experience, coupled with the above, leads them to the view that there is a shortage of available housing available to rent across the area. Accordingly, the Tribunal make a further deduction of 10% to reflect scarcity, which adjusts the rent to £2,295.00 per quarter.

Maximum Fair Rent

40. This is the rent calculated in accordance with the Maximum Fair Rent Order details of which are shown on the rear of the Decision Notice.
41. The Rent Acts (Maximum Fair Rent Order) 1999 restricts the amount by which the rent, less any variable service charge, may be increased, to a maximum 5% plus RPI since the last registration.
42. The only exception to this restriction is provided under paragraph 7 of the Order where a landlord carries out repairs or improvements which increase the rent by 15% or more of the previous registered rent. The Tribunal determined that such exception does not apply in this instance.
43. The rent to be registered in this application is not limited by the Fair Rent Acts' (Maximum Fair Rent Order) 1999 because it is below the maximum fair rent that can be registered of £2,772 per quarter prescribed by the Order.
44. The Tribunal accordingly determines that rent of **£2,295.00 per quarter is registered as the Fair Rent with effect from 19 June 2023**, that being the date of the Tribunal's decision.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.